

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE

DONNIE SMITH, )  
Petitioner, )  
v. ) No.: 3:16-CR-122-TAV-HBG-1  
UNITED STATES OF AMERICA, ) 3:18-CV-331-TAV-HBG  
Respondent. )

**ORDER**

This criminal matter is before the Court on the Report and Recommendation (“R&R”) entered by United States Magistrate Judge H. Bruce Guyton on August 19, 2021 [Doc. 26].<sup>1</sup> Judge Guyton recommends that the Court grant Petitioner’s motion to vacate, set aside, or correct his sentence [Doc. 2] and that Petitioner be permitted to bring a delayed direct appeal. There have been no timely objections filed to the R&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(2).

After carefully reviewing the matter, the Court agrees with Judge Guyton’s recommendation and reasoning, which the Court adopts and incorporates into its ruling. Accordingly, the Court **ACCEPTS IN WHOLE** the R&R [Doc. 26]. Petitioner’s motion to vacate, set aside, or correct his sentence [Doc. 2] is **GRANTED**, and Petitioner may bring a delayed direct appeal.

Generally, a criminal defendant must file a notice of appeal within fourteen days of the entry of judgment. *See* Fed. R. App. P. 4(b). However, Federal Rule of Appellate

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<sup>1</sup> Citations to the record refer to case number 3:18-CV-331-TAV-HBG.

Procedure 4(b)(4) provides that the Court may upon finding excusable neglect or good cause—even after the fourteen-day period has expired—extend the time to file a notice of appeal by up to thirty days.

The Court notes Defendant is currently in transit among Bureau of Prisons facilities. *See generally Find an Inmate*, Fed. Bureau of Prisons, <https://www.bop.gov/inmateloc/> (last visited Sept. 7, 2021) (BOP Register Number 51867-074). Thus, for good cause, the Court finds Defendant needs additional time to file his notice of appeal. Accordingly, the Court **GRANTS** Defendant an additional thirty days to file his notice of appeal. Defendant therefore must file his notice of appeal, if at all, within forty-four (44) days of entry of this Order.

IT IS SO ORDERED.

s/ Thomas A. Varlan  
UNITED STATES DISTRICT JUDGE